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**MAILED**

**FEB 23 2012**

**OFFICE OF PETITIONS**

In re Patent No. 5,989,277  
Issue Date: November 23, 1999  
Application No. 09/016,090  
Filed: January 30, 1998  
Patentee: Lemaire, et al.

ON PETITION

This is a decision on the petition under 37 CFR 1.378(c), filed January 19, 2012, to accept the delayed payment of a maintenance fee for the above-identified patent.

The petition is **DISMISSED**.

This patent issued on November 23, 1999. Accordingly, this patent expired on November 23, 2011 for failure to pay the third maintenance fee. Since the petition was submitted within twenty-four months after the six-month grace period provided in 37 CFR 1.362(e), the petition was timely filed under the provisions of 37 CFR 1.378(c).

A petition to accept the unintentionally delayed payment of a maintenance fee under 35 U.S.C. 41(c) and 37 CFR 1.378(c) must be accompanied by: (1) a statement that the delay was unintentional; (2) payment of the appropriate maintenance fee, unless previously submitted; (3) payment of the surcharge set forth in 37 CFR 1.20(i)(2).

The petition lacks item (1) above.

The statement of unintentional delay is not considered to be submitted by a proper party as required by 37 CFR 1.378(d), which states that any petition under this section must be signed by an attorney or agent registered to practice before the Patent and Trademark Office, or by the patentee, the assignee, or other party in interest.

In this regard, the petition is signed by one of two joint inventors. An unsigned paper or one not properly signed by a person having authority to prosecute the application is not entered. This applies, for instance, where a petition (or other paper) is signed by only one of two applicants and the one signing has not been given a power of attorney by the other application.

Therefore, as the petition is not signed by all the inventors and the record herein fails to disclose that (person signing petition) was ever given a power of attorney to act on behalf of the other inventors, or that he/she is an assignee of the entire interest and has complied with the provisions of 37 CFR 3.73(b)<sup>1</sup>, the petition is considered not to contain a proper statement of unintentional delay.

If reconsideration of this decision is desired, a properly signed petition for reconsideration under 37 CFR 1.378(e) must be filed within TWO (2) MONTHS from the mail date of this decision. For applicant's convenience a Statement under 37 CFR 3.73(b) is attached. No extension of this 2-month time limit can be granted under 37 CFR 1.136(a) or (b). This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

**Any such petition for reconsideration must be accompanied by the petition fee of \$400 as set forth in 37 CFR 1.17(f). The petition for reconsideration must include any lacking item(s) noted above, since, after a decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.**

If petitioner does not wish to pursue reinstatement of this expired patent, petitioner may request a refund of the \$2,365 maintenance fee and the \$1,640 surcharge submitted with the petition. The request should be made in writing and addressed to: Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

A courtesy copy of this decision is being mailed to petitioner at the address noted on the petition. Unless otherwise directed, all future correspondence regarding this patent will be directed solely to the above-noted correspondence address of record.

Further correspondence with respect to reinstatement of this patent should be addressed as follows:

By mail:                      Mail Stop PETITION  
                                    Commissioner for Patents  
                                    Post Office Box 1450  
                                    Alexandria, VA 22313-1450

By hand:                     U.S. Patent and Trademark Office  
                                    Customer Service Window, Mail Stop PETITION  
                                    Randolph Building  
                                    401 Dulany Street  
                                    Alexandria, VA 22314

<sup>1</sup>37 CFR 3.73(b) provides that: (1) when an assignee seeks to take action in a matter before the Office, the assignee must establish its ownership of the property to the satisfaction of the Commissioner; (2) ownership is established by submitting to the Office, in the Office file related to the matter in which action is sought to be taken, documentary evidence of a chain of title from the original owner to the assignee (e.g., copy of an executed assignment submitted for recording) or by specifying (e.g., reel and frame number) where such evidence is recorded in the Office; (3) the submission establishing ownership must be signed by a party authorized to act on behalf of the assignee; and (4) documents submitted to establish ownership may be required to be recorded as a condition to permitting the assignee to take action in a matter pending before the Office.

The centralized facsimile number is (571) 273-8300.

Any questions concerning this decision may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley  
Petitions Examiner  
Office of Petitions

cc: MR. NORMAN J. LEMAIRE III  
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